



May 15, 2009

Jay Manning
Washington Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

SENT VIA EMAIL

RE: PCBs in the Spokane River

Dear Mr. Manning:

As you may know, last week an Avista-owned power pole containing several transformers fell adjacent to the Spokane River on Blackwell Island in Idaho leaking PCBs into the Spokane River. The attached article from the Inlander discusses this incident. While it is difficult to prevent unforeseen spills of PCBs from occurring the incident and the article are strong reminders that the Spokane River has significant PCB problems and that Ecology needs to move forward with completion of the PCB TMDL for the Spokane River.

While I understand that you have personally directed staff to complete the dissolved oxygen TMDL before reexamining the PCB TMDL, there are several important reasons why the PCB TMDL should be completed as soon as possible and along a parallel track with the DO TMDL.

First, our community is poised to spend millions of dollars on upgraded wastewater treatment technology. It is critical that these entities are aware of and can plan for the implementation of the drastic PCB reductions that will be required to protect water quality and fisheries in the Spokane River. In an April 2006 email, you recognized this, stating, "I shudder to think of how they will react when we tell them [the permittees] that they now have to engage in whole suite of new activities and expenditures to reduce PCB concentrations." The need to address PCB limits now, rather than defer, was similarly recognized by Ecology's own consultants. Mike Sharar, an Ecology consultant on the DO TMDL, shared his view that phosphorus and PCB upgrades need to be addressed together: "PCB removal from treatment plant influent ... must be added to phosphorus in pilot testing/technology selection effort that is part of the DO TMDL." We strongly agree with Ecology's logic that being upfront with PCB requirements is in our community's interest.

Second and consistent with *Friends of Pinto Creek v. EPA*, 504 F.3d 1007 (9th Cir., 2007), any permit issued to Spokane County will need a PCB TMDL that demonstrates that the County will not cause or contribute to PCB violations in the Spokane River. Absent a TMDL, the County's limit for PCBs will need to be set at zero.

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Third, any permits issued for the Spokane River will need to include water quality-based limits for PCBs regardless of whether a TMDL is completed and the TMDL is the best tool for determining these limits. The lack of a completed TMDL cannot legally be used as an excuse to delay the establishment of these limits. EPA noted that a state's failure to complete TMDLs cannot be used as an excuse to defer the inclusion of limits in permits as required by Clean Water Act section 301(b)(1)(C). *See* 54 Fed. Reg. 23868, 23879; *see also In the Matter of Las Virgenes Municipal Water District*, Order No. WQ 98-11 at 11.¹

Lastly, the PCB TMDL will be designed, in part, to meet water quality standards on the Spokane Reservation. These standards are crafted to be protective of tribal subsistence fishing. Crafting a cleanup plan sooner rather than later will better protect our regions fisheries resource, tribal use of fish, and health of our community.

In addition, we are encouraged that Ecology continues to encourage stakeholders to collaborate and find common ground. However, when the Spokane River Forum worked with stakeholders from all sides to host a PCB technical workshop this June to build knowledge and trust, local stakeholders were shocked when Ecology declined to participate. Moreover, Ecology verbally notified the Spokane River Forum that it would receive no funding for the Public Participation Grants Ecology administers. We strongly disagree with these decisions because it further undercuts the type of collaboration and transparency Ecology says it supports.

For all these reasons, we urge Ecology to take the actions necessary to support local collaboration and leadership to quickly complete the PCB TMDL for the Spokane River.

Sincerely,



Rick Eichstaedt
Spokane Riverkeeper
Center for Justice

cc: Andy Dunau, Spokane River Forum
Michael Chappell, Director, Gonzaga Environmental Law Clinic
Christine Psyk, EPA
Ted Knight, Attorney, Spokane Tribe
Ron Lavigne, Attorney General's Office

¹ Available at http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/1998/wq1998_11.pdf.